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JUL 18 1997  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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\*NOT ADMITTED IN MD

July 18, 1997

DOCKET FILE COPY ORIGINAL

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: Petition for Reconsideration  
by WWAC, Inc.  
Fifth Report & Order and  
Sixth Report & Order  
MM Docket No. 87-268

Dear Mr. Caton:

Transmitted herewith, on behalf of GardenState Communications LP, permittee of Station WACI(TV), Atlantic City, New Jersey, are an original and nine (9) copies of its **Opposition** to the above-referenced Petition for Reconsideration filed by WWAC, Inc.

Should further information be desired in connection with this matter, please communicate with this office.

Very truly yours,



Robert L. Olender  
Counsel for  
GardenState Communications LP

Enclosures

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Before the  
**Federal Communications Commission**  
Washington, D.C. 20554

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JUL 18 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Advanced Television Systems  
and Their Impact Upon the  
Existing Television Broadcast

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MM Docket No. 87-268

TO: The Commission

**OPPOSITION**

Garden State Communications, L.P. ("Garden State"), permittee of Station WACI(TV), Atlantic City, New Jersey, herein submits its Opposition to the Petition for Reconsideration filed by WWAC, Inc. ("WWAC") in the above-referenced proceeding. In support thereof, the following is shown:

1. WWAC's petition, while feigning concern for the preservation of the public interest, convenience and necessity, is no more than a smoke screen in an attempt to steal an authorized permit for its own private interests by seeking to dismiss Garden State's application for modification of its permit and ultimately revoking the WACI permit. This is unconscionable! WACI has a legal right to retain its authorization and compete with WWAC in its market.

2. The Commission in its development of the Table of Allotments to usher television broadcasting into the digital age has appropriately protected WACI's permit as well as other UHF permittees and licensees. This was done equitably and uniformly throughout the Nation without selectively discriminating against any permittee or licensee, contrary to WWAC's challenge.

3. It is obvious that WWAC is not sincere in its championing for the welfare of all UHF stations as it suggests in its petition, but is only focused on furthering its own strategic position in the market at the expense of another UHF station, namely WACI. To bolster its ill-conceived position, WWAC makes numerous incorrect statements and assumptions characterizing the status of Station WACI. Attached is a Statement by Garden State's Managing Partner, Gloria Penn Easton, addressing and rebutting those inaccuracies.

4. It is ironic for WWAC to state on the one hand that it is concerned about the competitive ability of UHF stations, and on the other hand to selectively characterize some UHF stations as "unworthy." WWAC should be careful with its harsh characterization lest the same conclusion befalls its license when compared with other more "worthy" UHF stations. WWAC has operated at minimal power for nine (9) years, which would hardly classify it as a "worthy" station when compared with other full powered UHF stations.

5. The solution crafted by WWAC's own self-created dilemma is to file this petition in order to steal WACI's permit without due process. WWAC provides no support for this unprecedented action and certainly the filing of a Petition for Reconsideration does not give rise to this type of draconian relief. Clearly this will not advance the Commission's over-arching goal to serve the public interest, convenience and necessity, as submitted by WWAC. In fact, the only party benefiting from this arbitrary and capricious request would be WWAC, not the public

interest. The public interest would not be served by depriving the public of a new television service for Atlantic City, New Jersey.

6. The Commission should not allow WWAC to abuse its procedures for a purely self-motivated objective. The right to file a petition for reconsideration in this Docket is afforded to those parties who have legitimate public interest considerations to advance, not personal profit-driven motives. The FCC should not provide parties an opportunity to seek non-related dismissal of pending applications or revocation of valid construction permits, which is solely the relief that WWAC is requesting. WWAC had the opportunity, in the proper forum, to timely raise any objections it may have had regarding WACI's Construction Permit or Application for Modification of Construction Permit years ago. Obviously, WWAC was aware of these actions, but was content to ignore them so long as it could benefit economically from operating at a voluntary reduction in power.

7. It was only when the Commission released its Table of Allotments in this proceeding that it realized, through its own inaction, that it had harmed itself by not operating at a higher permissible power. Therefore, because it chose to reduce its power in order to cut back on its operating expenses, without regards for service to the public, its cries of foul-play ring hollow now that the FCC has released its Table of Allotments based upon WWAC's lower power.

8. By retaining the Table of Allotments in its present form and permitting WACI to continue to pursue its license will allow the public to ultimately benefit from the implementation of new service to Atlantic City and the environs. WACI has invested a considerable amount of time, money and effort into pursuing this license. To accept the arguments advanced by WWAC would establish a chilling precedent for all permittees, who would be at the whim of any licensee

who wished to condemn their permit in order to serve its own self interest. This cannot be allowed.

**ACCORDINGLY**, it is respectfully requested that the WWAC Petition for Reconsideration and the relief requested therein be denied.

Respectfully submitted,

**GARDEN STATE COMMUNICATIONS, L.P.**

By: \_\_\_\_\_

Robert L. Olender  
Its Attorney

July 18, 1997

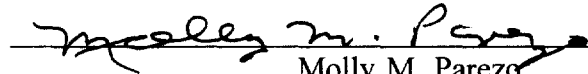
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**CERTIFICATE OF SERVICE**

I, Molly M. Parezo, secretary in the law firm of Baraff, Koerner & Olender, P.C., do hereby certify that a copy of the foregoing **Opposition** was served this 18th day of July, 1997, via first class United States mail, postage prepaid, upon the following:

Vincent A. Pepper  
Pepper & Corazzini, L.L.P.  
1776 K Street, N.W.  
Suite 200  
Washington, D.C. 20006

  
Molly M. Parezo

## **STATEMENT IN OPPOSITION**

Garden State Communications, L.P., permittee of Station WACI, Atlantic City, New Jersey, opposes the Petition for Reconsideration of WWAC, Inc. ("WWAC") filed before the FCC on June 13, 1997. This opposition addresses various statements set forth therein.

### **Page 2, Line 6**

WWAC states "...The effect of this implementation will be the solidification of the inequitable distribution of service between VHF and UHF station detrimentally affecting the competitive ability of the UHF licensees..." The entire argument forwarded by WWAC ignores the fact that WACI is a UHF station and their proposal seeks the demise of WACI. Their request to destroy one UHF station for the "improvement of their signal power" is selfish, mean spirited and without merit.

### **Page 2, Line 11**

WWAC says "...underlying engineering standards..." The FCC Chief Engineer responsible for the DTV Table of Allotments indicated to WACI that the FCC had tried to match or equal the amount of power and location of the original or modified allotment as of April 1997. He stated only the VHF's had their power increased, because they were so low the digital technology would not have worked.

It seems the simple problem is that WWAC lowered its power years ago, and broadcasted from a 300+ foot tower, to save money on the cost of using their full allotment of power. They opted to be at the lowest end of a "full power station" definition, and when their power allotment

was matched in April of 1997, they received the "same treatment" as all of the other 1600 TV stations in the nation, including WACI. WACI's power was matched by the FCC. There was no special favoritism nor was WACI or any other licensee treated as, or deemed, "unworthy." That is not a classification of the FCC but only of WWAC.

**Page 2, Line 16**

Please define "unworthy." Are not all of the FCC's allotments to be deemed equal? Is a station that opted to lower its power and save money in operational costs deemed less worthy than other stations that used their full complement of power and served the public?

**Page 2, Line 17**

"...the FCC adopted the DTV Table of Allotments, which protects a permittee that has never built its station..." WACI should be protected along with all the other stations, since it has tried diligently over the years to build its station but has been hindered by the short spacing problems, caused by FCC decisions and New Jersey environmental protection laws. Both have been above and beyond the control of WACI.

**Page 3, Paragraph 3**

"...denial of modification application of WACI TV...to change power levels and transmitter sites and revocation of its underlying Construction Permit..." In this petition WWAC is also criticizing the FCC for not granting its modification application to change its power level and transmitter site, while asking that another UHF small entrepreneur in the same market be thwarted and not allowed to go on the air. In other words, WWAC does not want to allow equal treatment before the law. This is a myriad of contradictions of its position on the "second class



citizenship of UHF stations." Here it attempts to establish a third class of FCC citizenship and put WACI in that class.

WWAC has completely ignored and left out the facts behind the reasons WACI has not gone on the air: the environmental laws of the state of New Jersey and the short spacing complications caused by the FCC's decision to allow WTGI, Wilmington, Delaware, to move its transmitter site in New Jersey. Each of these occurrences have severely impacted on WACI's ability to put up the station (as was predicted in a 1985 Petition to Deny WTGI's transmitter site move, which was granted despite the Petition).

WWAC also ignores the facts stated in WACI's petition: to lower the power was to allow it to go on top of an existing building to comply with the ANCI standards; and the station asked for a TEMPORARY BROADCAST AUTHORITY ("TBA) to allow it to operate, while it continued its search for a better site. Obviously, this was a temporary, intermediate step that would have allowed WACI to operate and serve the public while it continued its site search. All of this is spelled out in the 1995 petition to amend its construction permit.

#### **Paragraph 4**

In this paragraph, WWAC seeks "authorization to exchange DTV channel assignments with WACI-TV so that WWAC-TV may increase its audience to a level; less that its modification application..." WWAC has been back on the air for over nine years. When WWAC started broadcasting again, the lower power level was requested, not as a temporary measure, as in WACI's case, but as a cost saving devise. WWAC has been broadcasting at the lower level for almost nine years, serving only 130,000 people--not serving the entire community as it was licensed to serve.

WWAC speaks of the inequitable effects of the DTV Table on existing licensees. In its case, it appears the station could have avoided its situation by putting the public's interest before its own and increased its power level years ago. Had it been serving its full community of license, it would have had a better DTV allotment match.

**Page 12**

The petition says "...WWAC has been serving its community of license for almost 10 years." However, the station evidently preferred to save on the high cost of power rather than serve their full community of license. During these almost 10 years, WWAC could have petitioned the FCC earlier to increase its power back to its authorized level, as well as for allotments that would match its current transmission level. Its petition is only self serving and not about serving the public or acting in the public's interest. Rather than being mistreated by the FCC, this sounds more like poor planning by WWAC.

For a number of those years WWAC was almost an "unmanned station," receiving a satellite feed from a shopping program source, which it simply re-broadcast to its 130,000 viewers. There were no public affairs programs, no news broadcasts, no public service announcements of community events, no programs airing community issues, no children's programs, nor political programs. It is questionable how the station served its community. There was no EEO compliance because the station never even offered jobs to its community, since it was unmanned a great deal of the time and used only engineering technicians to check the equipment.

**Page 14**

WWAC states "...despite the overwhelming proof that the Station (WACI) is incapable of operating at the authorized site, and at the authorized power, the FCC has defacto codified the authorization of its DTV Table." WWAC completely ignores the years of hard work, money and effort spent on trying to find a non-short spaced site that was in keeping with the environmental laws of the State and Nation. The Commission has respected the diligence, persistence and commitment shown by WACI over the years in trying to solve problems not of its making in order to get the station on the air. It was fair and just to have treated WWAC the same as the other 1600 TV stations that are eligible for the DTV Allotment Table, including WWAC.

**Summation**

WACI-TV has continued to work to find a suitable transmission site that will comply with the FCC's separation standards and with the environmental protection laws. WWAC has ignored a petition filed in 1996 for a different transmitter site that would allow WACI to broadcast at its full complement of power. The site has less short spacing; that is de minimus to WTGI and WGTW. WACI is working with both stations to get their consent not to oppose the de minimus interference. Ironically, the DTV allocation may help solve or eliminate the problem. This possibility is also being researched by the engineers.

Because of some recent actions by the FAA, including the closing of a nearby airfield, the tower height on the site has recently been cleared as "no hazard to air navigation" by the FAA. WACI is presently working on getting the height approved by the township on the industrially zoned site. The tower height and power will allow WACI to put a city grade signal

over Atlantic City. WACI-TV has had many problems to solve over the past eight years in order to get the station on the air. This is evidenced by the numerous petitions to amend the Construction Permit filed to alleviate or solve the problem.

The Commission has been aware of the problems and has worked closely with the General Partner of Garden State Communications L.P., Mrs. Gloria Penn Easton. The Commission's staff has reviewed many engineering studies and technical proposed alternatives. Therefore, WACI-TV has earned the right to be included with the "eligible stations" on the DTV Allotment Table, and none of the Commission's licensees should be "unworthy of consideration."

While WACI-TV has great empathy for the problems faced by WWAC-TV and other UHF stations in the nation facing similar problems, it believes there is a better solution than destroying an "entrepreneurial, small business" by not allowing it to put the station on the air after more than eight years of great expense and hard work. WWAC's requested denial of WACI's 1995 petition to modify the Construction Permit and lower the power to place the antenna on an existing building and broadcast under a TBA may soon be a moot point with the petition being withdrawn from consideration. It may no longer be needed, if the permanent site is zoned for height.

Garden State Communications, therefore, respectfully requests that the Commission not grant WWAC's requests to reassign Channel 62 to WWAC; to swap Channels 62 or 53; to revoke WACI-TV's Construction Permit; and to reallocate it's DTV Channel 49 to WWAC.

**GARDEN STATE COMMUNICATIONS, L.P.**

Date: July 17, 1997

By: Gloria Penn Easton

Gloria Penn Easton  
General Partner